



**THE ATTORNEY GENERAL
OF TEXAS**

January 22, 1990

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Henry B. Keene
Chairman
Texas Board of Pardons and Paroles
P.O. Box 13401, Capitol Station
Austin, Texas 78711

LO-90-7

Dear Mr. Keene:

You ask whether employees of the Board of Pardons and Paroles (the board) whose positions have been reclassified in order to allow them to collect hazardous duty pay are entitled to receive that pay immediately or whether they must serve in a hazardous duty pay position for one year before receiving that pay. Conditioned on an answer that the employees are entitled to receive hazardous duty pay immediately, you also ask if the amount of pay can be based on each year the employee has served in his position prior to its designation as a hazardous duty pay position.

You explain that the board expanded the number of employees eligible to receive hazardous duty pay on July 11, 1989. According to article 6252-20b, V.T.C.S., board employees who have direct contact with inmates or administratively released prisoners are entitled to receive hazardous duty pay "for each year of service as an employee of this state in a position that requires the performance of hazardous duty." Article 6252-20b further provides that hazardous duty pay, with certain exceptions, is in lieu of longevity pay.

The plain language of that statute requires that an employee serve one year prior to being awarded hazardous duty pay. Therefore, board employees must serve in their reclassified positions for one year, at least until July 11, 1990, before they can receive hazardous duty pay. See generally Attorney General Opinion JM-548 (1986). After one year of service in a hazardous duty position, a reclassified board employee is entitled to receive hazardous duty pay based on that year of hazardous duty service and any prior years of state hazardous duty employment, whether those prior years of service were with the board or with another agency.

We need not answer your second question inasmuch as it is based on a different answer to your first. However, the exception noted above to the general rule that hazardous duty pay is in lieu of longevity pay may be pertinent to some of these reclassified employees. Because some of these transferred employees may be receiving longevity pay, we point out that subdivision (b) of article 6252-20b entitles an employee who has received longevity pay in a non-hazardous duty position and "who transfers to a position for which the employee is eligible to receive hazardous duty pay is entitled to continue to receive longevity pay for the years of service to the state performed in the prior position." Thus, for the first year of service in hazardous duty, those employees will continue receiving their longevity entitlement but will not receive the compensation for hazardous duty. After that first year of hazardous duty service, those employees will be entitled to continue to receive the longevity compensation for the years of service in the prior position and also to receive the specified compensation for hazardous duty.

Very truly yours,



Karen C. Gladney
Assistant Attorney General
Opinion Committee

KCG/er

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Opinion Committee

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